

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, To Increase Revenue Requirements for Electric and Gas Service and to Increase Rates and Charges for Gas Service Effective on January 1, 2003. (U 39 M)

Application 02-11-017
(Filed November 8, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company.

Investigation 03-01-012
(Filed January 16, 2003)

Application of Pacific Gas and Electric Company Pursuant to Resolution E-3770 for Reimbursement of Costs Associated with Delay in Implementation of PG&E's New Customer Information System Caused by the 2002 20/20 Customer Rebate Program. (U 39 E)

Application 02-09-005
(Filed September 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING MOTION FOR APPROVAL OF A NONDISCLOSURE
AND PROTECTIVE AGREEMENT**

On November 7, 2005, The Utility Reform Network (TURN) filed its *Motion of The Utility Reform Network for Approval of a Nondisclosure and Protective Agreement* in this proceeding. TURN states that Pacific Gas and Electric Company (PG&E) reviewed TURN's Motion prior to its filing, and has indicated that PG&E has no objection to it. TURN has demonstrated good cause for the relief it has requested. Pursuant to Rule 45 (h) and (i), which permit a ruling on a

motion before responses have been filed, this ruling grants TURN's Motion and approves the proposed Nondisclosure and Protective Agreement, attached hereto as Appendix 1, governing the treatment and protection of confidential customer information produced by PG&E for use by TURN in this proceeding.

IT IS RULED that:

1. The *Motion of The Utility Reform Network for Approval of a Nondisclosure and Protective Agreement*, filed November 7, 2005, is granted.
2. The Nondisclosure and Protective Agreement, attached hereto as Appendix 1, is approved.
3. Notwithstanding Electric and Gas Rule 9M, PG&E is authorized to provide TURN with customer-specific information in accordance with the approved Nondisclosure and Protective Agreement.

Dated November 17, 2005, at San Francisco, California.

/s/ JULIE M. HALLIGAN

Julie M. Halligan
Administrative Law Judge

APPENDIX 1

Proposed Nondisclosure and Protective Agreement and Nondisclosure Certificate

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NONDISCLOSURE AND PROTECTIVE AGREEMENT

This Nondisclosure and Protective Agreement ("Agreement") is effective this ____ day of _____, 2005, by and between The Utility Reform Network ("TURN") and its counsel of record, and Pacific Gas and Electric Company ("PG&E") and its counsel of record.

WHEREAS, TURN's Motion for an Investigation of PG&E's Billing and Collection Practices initiated this phase of Order Instituting Investigation 03-01-012; and

WHEREAS, TURN expects to continue to play an active role in the ongoing investigation of the company's billing and collection practices; and

WHEREAS, the billing and collection practices at issue in this investigation involve customer-specific information that includes customer identity; and

WHEREAS, such customer-specific information will be useful in the review and evaluation of the issues identified in the Assigned Commissioner's Ruling of February 25, 2005, and as reiterated in the Scoping Memo issued May 26, 2005; and

WHEREAS, the Commission has in the past explicitly recognized the privacy interest that customers of the investor-owned utilities have in the personal data contained in the customer-specific information obtained by the utilities in the regular course of providing service; and

WHEREAS, PG&E will not provide TURN with the requested information absent a Commission order permitting such release of customer information; and

WHEREAS, TURN has no commercial interest in the identity of PG&E's customers or in any other customer-specific information, and intends to use such information only for purposes of facilitating the group's participation in this proceeding; and

WHEREAS, confidential information of a proprietary nature, such as information about PG&E's market, market strategies, or similar matters is not the subject of this protective order; and

WHEREAS, the parties hereto wish to streamline discovery and facilitate preparation of pleadings and testimony in this proceeding and avoid unnecessary law and motion practice; and

ACCORDINGLY, the parties hereto agree that the following terms and conditions shall govern the use of customer-specific information provided by PG&E to TURN in this proceeding:

1. This Agreement shall govern all PROTECTED MATERIALS produced by PG&E.
2. PG&E may designate as "PROTECTED MATERIALS" those items provided through discovery, upon request, or otherwise which contain customer-specific information, which are not available to the public, and which, if disclosed freely, would, in PG&E's judgment, unduly jeopardize its customers' expectation of confidentiality for information provided to the utility in the course of obtaining and maintaining utility service.

3. PROTECTED MATERIALS provided to TURN subject to this agreement shall remain available until the date that this Investigation is concluded or otherwise terminated by an order(s) of the Commission, which order(s) is no longer subject to judicial review. Within 30 days after such date, TURN shall return all documents or other materials containing PROTECTED MATERIALS or shall destroy said materials. If requested by PG&E, TURN shall also submit to PG&E an affidavit stating that all PROTECTED MATERIALS are being returned or have been destroyed by TURN.

4. To the extent possible, the first page of material containing PROTECTED MATERIALS and each disk containing PROTECTED MATERIALS shall be physically marked "Contains Customer-Specific Information - DO NOT RELEASE" by PG&E. All material containing PROTECTED MATERIALS shall be maintained by TURN in a secure manner. Access shall be limited to those TURN staff members and representatives specifically authorized pursuant to paragraph 6.

5. PROTECTED MATERIALS covered by this Agreement shall be treated as confidential by TURN in accordance with the certificate executed pursuant to paragraph 6. PROTECTED MATERIALS shall not be intentionally used except as necessary for the conduct of this Investigation; nor shall they be disclosed in any manner to any person except a TURN staff member or representative who is engaged in the conduct of this Investigation and who needs to know the information in order to carry out that person's responsibilities in this Investigation. TURN shall also be permitted to disclose PROTECTED MATERIALS to PG&E, CPSD and any other entity expressly authorized to receive such information.

6. a. A TURN staff member or representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to the PROTECTED MATERIALS pursuant to this Agreement unless that staff member or representative has first executed, and there has been delivered to PG&E, a non-disclosure certificate in the form set forth in Appendix 1.

b. TURN's attorneys in this proceeding are responsible for ensuring that persons under their employment, instruction, supervision or control comply with this Agreement.

7. If TURN intends to submit or use in the Proceedings any PROTECTED MATERIALS in any written submission, including, without limitation, testimony, briefs, motions, comments, or protests, TURN shall submit two versions of such document: a full version under seal to the extent filed with the Commission or served on Commission staff, labeled “CONTAINS PROTECTED MATERIALS – NOT FOR PUBLIC DISCLOSURE” and a public version served on all other parties with PROTECTED MATERIALS redacted. If TURN intends to use in the Investigation any PROTECTED MATERIALS such that the use would result in a public disclosure of those PROTECTED MATERIALS, including, without limitation, through cross-examination or other oral presentations before the Commission, the attorney for TURN shall contact the attorney for PG&E as soon as practicable prior to such use, and counsel shall constructively explore means of identifying the PROTECTED MATERIAL so that the confidentiality thereof may be reasonably protected (including, but not limited to, clearing the hearing room during examination, discussion, or argument concerning the PROTECTED MATERIAL), while at the same time enabling an effective presentation. If PG&E and the TURN are unable to agree upon a procedure to protect the confidentiality of the PROTECTED MATERIAL or if TURN asserts the PROTECTED MATERIALS should not be filed under seal, TURN shall request a ruling from the presiding Administrative Law Judge; PG&E reserves the right to oppose TURN’s request. Except as expressly provided for herein, no use can be made of the PROTECTED MATERIAL that would fail to protect its confidentiality without such a ruling from the presiding Administrative Law Judge.

8. The presiding Administrative Law Judge retains the discretion to review and evaluate the facts and circumstances involved in any proposed use of PROTECTED MATERIALS in Commission hearings, and the flexibility to respond in whatever manner is most appropriate under the circumstances, including the holding of in camera hearings.

9. Nothing in this Agreement shall be construed as precluding any party from objecting to the use of PROTECTED MATERIALS on any legal grounds.

10. Nothing in this Agreement shall preclude any party from requesting the presiding Administrative Law Judge, the Commission or any other body having appropriate authority to find that this Agreement should not apply to all or any part of any

materials previously designated as PROTECTED MATERIALS pursuant to this Agreement.

11. The presiding Administrative Law Judge shall resolve any disputes arising under this Agreement or refer such dispute to the Administrative Law Judge designated by the Commission to resolve law and motion matters. Prior to presenting any dispute under this Agreement to the presiding Administrative Law Judge or law and motion Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. In any challenge to the designation of materials as PROTECTED MATERIALS, the burden of proof shall be on the PG&E.

12. To the extent that PROTECTED MATERIALS are discussed, analyzed or otherwise the subject of consideration during any conference or other session held in connection with the Investigation, only individuals entitled to have access to such information (either pursuant to this agreement or pursuant to statutory provisions such as those applicable to Commission staff) may be present for such sessions.

13. This Agreement shall be governed and construed according to the laws of the State of California.

14. This Agreement sets forth the complete understanding of the parties hereto with respect to the subject matter hereof as of the date first above set forth and supersedes any prior understandings, discussions, or course of conduct (oral and written). Any modification or waiver of the provisions hereof must be written, executed by both parties, and shall not be implied by any usage of trade or course of conduct.

15. Nothing in this Agreement shall be deemed to preclude any party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in the Proceedings under this Agreement.

16. This Agreement may be executed in separate counterparts by each party, each of which shall be fully effective as to the party executing it.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date entered below.

Dated: _____

By: _____

Hayley Goodson
The Utility Reform Network

A.02-11-017 et al. JMH/niz

Dated:_____

By:_____

Attorney for: Pacific Gas and Electric

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NONDISCLOSURE CERTIFICATE

I certify my understanding that access to PROTECTED MATERIALS is provided to me pursuant to the terms and restrictions of the Nondisclosure and Protective Agreement ("Agreement"), concerning the above-captioned proceedings. I have been given a copy of and have read that Agreement and agree to be bound by it. I understand that the contents of the PROTECTED MATERIALS, any notes or other memoranda or any other form of information which copy or disclose PROTECTED MATERIALS shall not be disclosed to anyone other than in accordance with the Agreement and shall not be intentionally used for any purpose other than participation in the above-captioned proceeding before the California Public Utilities Commission. I agree that my obligation to honor the confidentiality of the PROTECTED MATERIALS shall continue after the issuance of the final, non-appealable order disposing of the

merits the above-captioned proceedings as set forth in the Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Commission.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Address: _____

Date: _____

(END OF APPENDIX 1)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion for Approval of a Nondisclosure and Protective Agreement on all parties of record in this proceeding or their attorneys of record.

Dated November 17, 2005, at San Francisco, California.

/s/ ELVIRA T. NIZ

Elvira T. Niz

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.